



February 8, 2019

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89

Dear Ms. Dortch:

On February 6, 2019, Cinnamon Rogers, Dileep Srihari, K.C. Swanson, and Savannah Schaefer of the Telecommunications Industry Association (“TIA”) met with Trent Harkrader, Ryan Palmer, Justin Faulb, Kate Dumouchel, Aaron Garza (phone), and John Visclosky (phone) of the Wireline Competition Bureau to discuss the above-captioned proceeding.

During the meeting, TIA urged the Commission to expedite the adoption of policies that are consistent with the attached presentation. TIA also referred to its prior comments and reply comments filed in this proceeding.¹

Pursuant to Section 1.1206 of the Commission’s rules, this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Rogers", is written over a horizontal line.

Cinnamon Rogers,
Senior Vice President, Government Affairs
Telecommunications Industry Association

Enc: Meeting Presentation

Cc: Trent Harkrader, Ryan Palmer, Justin Faulb, Kate Dumouchel, Aaron Garza, John Visclosky

¹ Comments of the Telecommunications Industry Association, filed June 1, 2018 in WC Docket No. 18-89 (“[TIA Comments](#)”); Reply Comments of the Telecommunications Industry Association, filed July 2, 2018 (“[TIA Reply Comments](#)”); Comments of the Telecommunications Industry Association, filed Nov. 16, 2018 (“[TIA PN Comments](#)”); Reply Comments of the Telecommunications Industry Association, filed Dec. 7, 2018 (“[TIA PN Reply Comments](#)”).

USF National Security

February 2019



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Overview

- The Case for Immediate Action
- A Narrowly-Tailored Approach
- TIA's Proposal
- Mitigating the Costs
- Legal Authority
- The FCC's Role in Context
- Procedural Issues



The Case for Immediate Action



- Congress has recognized a serious national security concern regarding certain suppliers
 - FY19 NDAA Section 889 established **August 2020** deadline
- Record provides details about specific concerns
 - TIA has explained why Huawei, ZTE, and Kaspersky Lab differ from others (TIA Comments at 10-18; TIA Reply Comments at 44-70)
- Marketplace needs certainty as 5G is being rolled out in earnest
 - Mitigation must happen in parallel, and on deadline (TIA PN Reply Comm at 22-23)
- U.S. Allies are taking action

A Narrowly-Tailored Approach



- FCC USF Proceeding Should Focus on Specific Suppliers of Concern
- General Supply Chain Risk Management is Being Addressed By Interagency Processes
 - Active work is underway at DHS and elsewhere to improve supply chain risk management in which TIA and our member companies are participating
 - Latest version of NIST Framework addresses supply chain security
 - Product testing is not a viable alternative path (TIA Comments at 35-39; Reply Comm. 17-21)
- Determinations of Prohibited Suppliers Should Derive from Expert Agencies and/or Congress
 - FCC should rely on determinations made by expert agencies such as DoD, DNI, DHS (example: DHS directive on Kaspersky) or by Congress (example: Section 889) regarding which suppliers should be prohibited
 - FCC should not make independent national security determinations

TIA's Proposal

- TIA has suggested possible rule text (TIA Comments at 88-89)
- Rule should describe the triggering actions by Congress or other agencies that result in a company being added to the FCC's list (TIA Comments at 54-58)
- Focus on logic-enabled components from suppliers of concern (TIA Comments at 47-53)
 - Congress took a very similar approach in Section 889
- Use attestations (with options) to enforce compliance (TIA Comments at 62-63)
 - Option A – no logic-enabled components from Company X are in our products
 - Option B – zero-percent attestation, i.e., no components (at all) from Company X

Mitigating the Costs

- Congress recognized in Sec. 889(b)(2) that there would be costs, but directed agencies to proceed notwithstanding the costs
 - FCC can consider mitigation assistance per requirements of the statute
- Equipment market is robustly competitive
 - TIA Comments at 71-77; TIA Reply Comments at 31-41
- Benefits of the rule
 - National security
 - Promoting consumer confidence, reducing potential for data breaches

Legal Authority



- FCC has sufficient authority under Section 254(b)
 - But identify a limiting principle when construing “public interest”
 - National security provisions in Communications Act suggest a limiting principle of deferring to expert agencies (and Congress) regarding which suppliers
- FY19 NDAA Section 889 provides additional authority
 - Statute applies to USF (TIA PN Comments at 4-14; PN Reply Comm at 3-13)
 - Fully consistent with TIA proposal (TIA PN Comments at 14-21)
 - Should not restrict use of non-Federal dollars (TIA PN Comments at 23-25)

The FCC's Role in Context



- Congress
 - Section 889 took action re: Huawei & ZTE, earlier statute addressed Kaspersky
 - Statutes leave it to FCC and agencies to implement, including USF prohibition
- DHS – task force underway with broader focus on ICT supply chain security
- NIST (and CSRIC) – standards, process management, best practices
- DoD & GSA – implementation guidance will focus on federal agency procurements under 889(a)
- Commerce & DOJ – export controls, etc.
- **FCC – USF & other funding programs**
 - Implementation of grants/loans prohibition under 889(b)
 - Work with DoD and other agencies collaboratively (TIA PN Comments at 25-28)

Procedural Issues

- FCC Has Provided Adequate Notice
 - TIA Reply Comments at 88-90 (NPRM); TIA PN Reply Comments at 26-33 (Sec. 889)
- Rule Would Not Violate Due Process
 - Certain suppliers are distinguishable from others (TIA Reply Comments at 44-70)
 - FCC may rely on determinations by Congress etc. (TIA Reply Comments at 81-85)
 - An individualized hearing is not required (TIA Reply Comments at 91-96)
- Section 889 Does Not Limit the FCC's Pre-existing Authority to Act
 - TIA PN Reply Comments at 18-19

Q&A

